

JS-44 (Rev 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b>  RICHARD DUNCAN  <b>(b)</b> County of Residence of First Listed Plaintiff <u>MONTGOMERY, PENNSYLVANIA</u> (EXCEPT IN U.S. PLAINTIFF CASES)  <b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)  Kevin P. Kelly, Esquire KELLY & HERRON, P.C. 1500 Market Street, Centre Square – West Tower, Suite W-3110 Philadelphia, PA 19102 (215) 972-1500  James C. Haggerty, Esquire HAGGERTY GOLDBERG SCHLEIFER & KUPERSMITH, P.C. 1835 Market Street, Suite 2700, Philadelphia, PA 19103 (267) 350-6600	<b>DEFENDANTS</b>  OMNI INSURANCE COMPANY  County of Residence of First Listed Defendant <u>COBB, GEORGIA</u> (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known)  R. Bruce Morrison, Esquire MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN 2000 Market Street, Suite 2300, Philadelphia, PA 19103 (215) 575-2600
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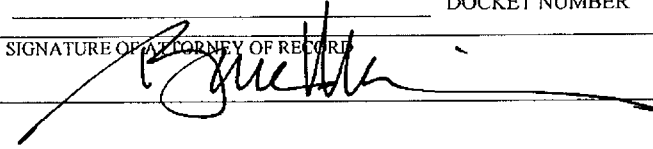
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)  <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4. Diversity (Indicates Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen of Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen of Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)				
<b>CONTRACT</b> <input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits. <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 195 Franchise	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury – Med Malpractice <input type="checkbox"/> 365 Personal Injury – Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS – Third Party 26 USC 7609	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing / Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 445 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

<b>V. ORIGIN</b> (Place an "X" in One Box Only) <input type="checkbox"/> 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another District (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate	<b>VI. CAUSE OF ACTION</b> Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes) <u>28 U.S.C. 1332; 28 U.S.C. 1441 and 1446</u> Brief description of cause: <u>Bad faith</u>
<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint. JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

<b>VIII. RELATED CASE(S) IF ANY</b>		(See instructions)	JUDGE	DOCKET NUMBER
DATE	SIGNATURE OF ATTORNEY OF RECORD			
FOR OFFICE USE ONLY				
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE

April 1, 2016



## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA – DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff 1300 Pennsylvania Avenue, Apartment H-3, Orelan, PA 19075

Address of Defendant 2018 Powers Ferry Road, Suite 400, Atlanta, GA 30339

Place of Accident, Incident or Transaction Philadelphia, Pennsylvania

(Use Reverse Side for Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 8.1(a)) Yes ☒ No ☐

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_

Date Terminated \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier number case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases

1. ☒ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability – Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, \_\_\_\_\_ counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE \_\_\_\_\_

Attorney-at-Law

Attorney I.D. # \_\_\_\_\_

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE

April 1, 2016

[Signature]  
Attorney-at-Law

34797

Attorney I.D. #

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

<b>Richard Duncan</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>Omni Insurance Company</b>	:	<b>NO.</b>

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus-Cases brought under 28 U.S.C. §2241 through §2255. ( )
- (b) Social Security-Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration-Cases require to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos-Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management-Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management--Cases that do not fall into any one of the other tracks. (x)

Date

April 1, 2016

R. Bruce Morrison, Esquire



DEFENDANT

Attorney for

215-575-2600

Telephone

215-575-0856

FAX Number

rbmorrison@mdwecg.com

E-Mail Address

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD DUNCAN	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO.
	:	
OMNI INSURANCE COMPANY	:	
	:	
	:	
Defendant.	:	

**NOTICE OF REMOVAL**

TO: THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Defendant, Omni Insurance Company ("Omni" and/or "Defendant"), by and through its attorneys, Marshall, Dennehey, Warner, Coleman & Goggin, hereby files this Notice of Removal of this case from the Court of Common Pleas of Philadelphia County, Pennsylvania, where it is now pending, to the United States District Court for the Eastern District of Pennsylvania on the basis of diversity jurisdiction and, in support thereof, avers as follows:

1. Plaintiff, Richard Duncan, commenced this action against Defendant by Complaint filed on or about March 8, 2016 in the Court of Common Pleas of Philadelphia County, Pennsylvania, docketed as March Term, 2016, No. 000267. (A copy of Plaintiff's Complaint is attached hereto and marked as Exhibit "A").
2. The Complaint was served upon Defendant in Atlanta, Georgia by Certified Mail, Return Receipt Requested, on or about March 11, 2016 (A copy of the Affidavit of Service of Plaintiff's Complaint upon Defendant is attached hereto and marked as Exhibit "B").

3. The Complaint states that Plaintiff, Richard Duncan, was at all relevant times a resident of the Commonwealth of Pennsylvania residing at 1300 Pennsylvania Avenue, Apartment H-3, Oreland, PA 19075. (Exhibit "A", ¶ 1).

4. Defendant, Omni Insurance Company, is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located at 2018 Powers Ferry Road, Suite 400, Atlanta, Georgia 30339.

5. Plaintiff's Complaint asserts claims for alleged bad faith (excess verdict) and bad faith (common law and statutory pursuant to 42 Pa. C.S.A. § 8371). . (Exhibit "A").

6. Based upon the allegations of Plaintiff's Complaint, the amount in controversy in this action is in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, as Plaintiff has demanded payment of \$28,000 (the award of the arbitrators in the underlying tort action) as well as judgment against Defendant for claims of alleged bad faith, including attorneys fees and punitive damages, in an amount in excess of \$50,000 in both Count I and Count II of the Complaint. See Exhibit "A".

7. As such, this Honorable Court has jurisdiction pursuant to the provisions of 28 U.S.C. §1332 based upon the fact that there exists diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00.

8. The present lawsuit is accordingly removable from the state court to the United States District Court pursuant to 28 U.S.C. §§ 1441 and 1446.

9. This Notice of Removal has been filed within thirty (30) days after receipt by Defendant of the Complaint in accordance with 28 U.S.C. § 1446(b).

10. Written notice of the filing of this Notice of Removal has been given to the adverse party in accordance with 28 U.S.C. §1446(d) and as noted in the attached Certificate of Service.

11. Promptly after filing with this Honorable Court and with the assignment of a Civil Action Number, a copy of this Notice of this Removal will be filed with the Court of Common Pleas of Philadelphia County, Pennsylvania in accordance with 28 U.S.C. § 1446(d).

12. Copies of all process, pleadings and other Orders which have been received by Defendant in this action are filed herewith.

**WHEREFORE**, Defendant, Omni Insurance Company, respectfully requests that it may effect the Removal of this action from the Court of Common Pleas of Philadelphia County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted:

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN**

BY: 

R. BRUCE MORRISON, ESQUIRE  
PA Attorney I.D. No. 34797  
2000 Market Street, Suite 2300  
Philadelphia, PA 19103  
215-575-2600/ 215-575-0856 (F)  
rbmorrison@mdwecg.com  
*Attorney for Defendant*

Dated: April 1, 2016

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD DUNCAN

Plaintiff,

v.

OMNI INSURANCE COMPANY

Defendant.

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CIVIL ACTION

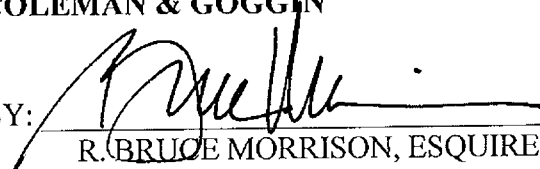
NO.

**CERTIFICATION**

I, R. Bruce Morrison, Esquire, hereby certify that the facts set forth in the foregoing  
Notice of Removal are true and correct to the best of my knowledge, information and belief.

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN**

BY:

  
R. BRUCE MORRISON, ESQUIRE  
*Attorneys for Defendant*

Dated: April 1, 2016



**CERTIFICATE OF SERVICE**

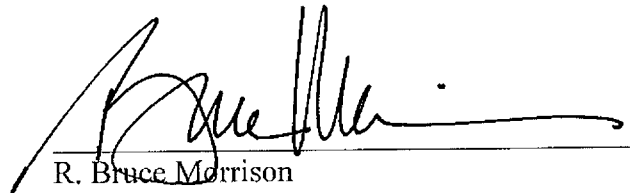
I, R. Bruce Morrison, Esquire, attorney for Defendant, hereby certify that a true and correct copy of the foregoing Notice of Removal and was served upon the following parties via U.S. Mail, postage prepaid, on the below date:

Kevin P. Kelly, Esquire  
KELLY & HERRON, P.C.  
1500 Market Street  
Centre Square – West Tower  
Suite W-3110  
Philadelphia, PA 19102  
*Attorney for Plaintiff*

James C. Haggerty, Esquire  
HAGGERTY, GOLDBERG, SCHLEIFER & KUPERSMITH, P.C.  
1835 Market Street, Suite 2700  
Philadelphia, PA 19103  
*Attorney for Plaintiff*

Dated: \_\_\_\_\_

April 1, 2016

  
R. Bruce Morrison

# EXHIBIT "A"



RICHARD DUNCAN  
1300 Pennsylvania Avenue  
Apartment H-3  
Oreland, PA 19075

v.

OMNI INSURANCE COMPANY  
2018 Powers Ferry Road, Suite 400  
Atlanta, GA 30339

: IN THE COURT OF COMMON PLEAS  
: PHILADELPHIA COUNTY, PENNSYLVANIA

:

:

:

:

:

:

:

:

TERM, 2016

: NO.

**CIVIL ACTION -- COMPLAINT**

1. The plaintiff, Richard Duncan, is an adult individual resident and citizen of the Commonwealth of Pennsylvania residing at 1300 Pennsylvania Avenue, Apartment H-3, Oreland, Pennsylvania 19075

2. The defendant, Omni Insurance Company ("Omni"), is a corporation organized and existing under the laws of the State of Georgia with its principal place of business located in Atlanta, Georgia, being duly authorized to and conducting business in the Commonwealth of Pennsylvania.

3. The defendant, Omni, regularly and routinely conducted business in the City and County of Philadelphia.

4. On October 8, 2012 the plaintiff, Richard Duncan, was a passenger on board the SEPTA Route "47" bus when it was violently struck by a motor vehicle owned by Shameka Renee Lamar and operated by Chris Aaron at or near the intersection of 8<sup>th</sup> and Dickenson Streets in Philadelphia, Pennsylvania.

5. The plaintiff, Richard Duncan, sustained personal injury in the collision.

6. At the time of the accident there existed, in full force and effect, a policy of insurance issued by the defendant, Omni, to Shameka Renee Lamar providing coverage in

accordance with the requirements of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701 et seq.

7. The policy of insurance issued by the defendant, Omni, to Shameka Renee Lamar provided coverage for the motor vehicle being operated by Chris Aaron at the time of the October 8, 2012 collision.

8. Following the motor vehicle accident, the plaintiff, Richard Duncan, made claim upon Chris Aaron, Shameka Renee Lamar and the defendant, Omni, seeking recovery of damages in tort.

9. By letter dated July 1, 2014 counsel for the plaintiff, Richard Duncan, wrote to the defendant, Omni, providing all information regarding liability and damages with respect to the claims arising from the October 8, 2012 collision. A true and correct copy of the July 1, 2014 letter from counsel for the plaintiff, Richard Duncan, is attached hereto and marked Exhibit "A".

10. By letter dated July 8, 2014 the defendant, Omni, wrote to counsel for the plaintiff, Richard Duncan, denying and disclaiming all coverage for the loss on the basis that the vehicle owned by Shameka Renee Lamar and insured by the defendant, Omni, was being operated by an unlicensed driver at the time of the collision. A true and correct copy of the July 8, 2014 letter from Andrew Funk, Bodily Injury Supervisor of the defendant, Omni, is attached hereto and marked Exhibit "B".

11. In the letter of July 8, 2014, Andrew Funk, Bodily Injury Supervisor of the defendant, Omni, advised counsel for the plaintiff, Richard Duncan:

Omni Insurance Company has completed its investigation into the above captioned loss. We have determined there is no coverage, as the insured vehicle was being operated by an unlicensed driver.

The policy reads in Part A-Liability Coverage, that an “Insured as used in this Part means: 3.A person using your covered auto with the owner’s express or implied permission and within the scope of the permission granted. The person must hold a valid driver’s license at the time of the loss and must not be a regular operator of your covered auto.” Additionally, Exclusion 16 reads in pertinent part: “We do not provide Liability Coverage for any insured: 16. For bodily injury or property damage resulting from the ownership, maintenance or use of any vehicle when driven by an individual who: c. Does not have a valid driver’s license; or d. Has a suspended or revoked driver’s license.” Our investigation has revealed that the vehicle operator did not have a valid license.

Due to the insured vehicle being operated by an unlicensed driver, Omni Insurance Company will be unable to provide liability coverage, or make any payments relative to damages that may have resulted in the accident.

See Exhibit “B”.

12. In denying and disclaiming coverage for the claims arising from the October 8, 2012 collision, the defendant, Omni, knowingly and recklessly ignored § 1574 of the Pennsylvania Motor Vehicle Code. 75 Pa.C.S.A. § 1574.

13. Section 1574 of the Pennsylvania Motor Vehicle Code provides:

(a) **General Rule.** – No person shall authorize or permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under this Chapter or who is not licensed for the type or class of vehicle to be driven.

(b) **Penalty.** – Any person violating the provisions subsection (a) is guilty of a summary offense and shall be jointly and severally liable with the driver for any damages caused by the negligence of such driver in operating the vehicle.

75 Pa.C.S.A. § 1574.

14. The plaintiff, Richard Duncan, thereafter instituted suit against Chris Aaron and Shameka Renee Lamar in the Court of Common Pleas of Philadelphia County (Richard Duncan v. Chris Aaron and Shameka Renee Lamar, September Term, 2014, No. 0479). A true and correct copy of the Complaint is attached hereto and marked Exhibit “C”.

15. In the Complaint in the underlying tort action, the plaintiff, Richard Duncan, specifically made claim against Shameka Renee Lamar for recovery of damages as a result of allowing an unlicensed driver to operate her vehicle.

16. In the Complaint, the plaintiff, Richard Duncan, specifically averred:

13. The aforesaid collision, which caused Plaintiff's injuries and losses was a direct and proximate result of the negligent and careless conduct of the defendant owner, Shameka Renee Lamar, which consisted of the following:

- a) failing to exercise due care for the rights, safety and position of the plaintiff at the location aforesaid;
- b) failing to maintain the vehicle in proper working order;
- c) negligently and carelessly granting permission to the defendant driver for the use of the vehicle owned by the defendant owner, when the latter defendant knew or should have known that the former defendant was unlicensed and/or incapable or unwilling to properly and safely operate said vehicle.

See Exhibit "C", ¶ 13.

17. The defendant, Omni, did not provide a defense to Chris Aaron and/or Shameka Renee Lamar in the action instituted by the plaintiff, Richard Duncan, in the Court of Common of Philadelphia County.

18. The defendant, Omni, did not agree to indemnify Chris Aaron and/or Shameka Renee Lamar in the action instituted by the plaintiff, Richard Duncan, in the Court of Common of Philadelphia County.

19. The plaintiff, Richard Duncan, proceeded to arbitration in the underlying tort action in the Court of Common Pleas of Philadelphia County.

20. An Arbitration Hearing was conducted in the underlying tort action in the Court of Common Pleas of Philadelphia County on June 3, 2015.

21. Following the Arbitration Hearing in the underlying tort action, the arbitrators entered a Report and Award of Arbitrators in favor of the plaintiff, Richard Duncan, and against Chris Aaron and Shameka Renee Lamar. A true and correct copy of the Report and Award of Arbitrators is attached hereto as Exhibit "D".

22. The Report and Award of Arbitrators entered in the underlying tort action provides:

Judgment for Plaintiff and against Defendants, Chris Aaron and Shameka Renee Lamar, in the amount of \$28,000.00 (\$13,000.00 for medicals and \$15,000.00 for pain and suffering).

See Exhibit "D".

23. The plaintiff, Richard Duncan, thereafter entered Judgment on the Arbitration Award against Chris Aaron and Shameka Renee Lamar. A true and correct copy of the Praecipe to Enter Judgment is attached hereto and marked Exhibit "E".

24. The defendant, Omni, has not satisfied the Judgment.

25. The plaintiff, Richard Duncan, thereafter obtained from Shameka Renee Lamar an Assignment of all claims and rights against the defendant, Omni. A true and correct copy of the Assignment is attached hereto and marked Exhibit "F".

26. The defendant, Omni, acted in bad faith in refusing to defend and indemnify Shameka Renee Lamar in the underlying tort action.

27. The defendant, Omni, is responsible for payment of the entire Judgment entered in the underlying tort action against Shameka Renee Lamar plus interest and delay damages.

28. The defendant, Omni, is obligated to make payment of interest, counsel fees, costs and punitive damages in connection with its wanton, willful and reckless failure to defend and indemnify Shameka Renee Lamar in the underlying tort action.



**COUNT I**  
**(Bad Faith – Excess Verdict)**

29. The plaintiff, Richard Duncan, hereby incorporates by reference the foregoing Paragraphs 1 through 28 of this Complaint as though same were fully set forth herein.

30. The defendant, Omni, is obligated to make payment of the \$28,000.00 Judgment entered in the underlying tort action, plus interest and delay damages as a result of its wanton, willful and reckless failure to defend and indemnify Shameka Renee Lamar in the underlying tort action.

31. The defendant, Omni, failed to defend and indemnify Shameka Renee Lamar in the underlying tort action in direct contravention of the policy of insurance and the requirements of the Pennsylvania Motor Vehicle Code.

32. The defendant, Omni, breached the express and implied terms, provisions, promises and covenants of the policy of insurance by, *inter alia*:

- (a) engaging in unfair or deceptive acts or practices;
- (b) failing to fully, fairly and promptly evaluate the coverage issues;
- (c) failing to provide a defense to Shameka Renee Lamar in the underlying tort action;
- (d) failing to indemnify Shameka Renee Lamar in the underlying tort action;
- (e) failing to make payment of the \$28,000.00 Judgment entered in the underlying tort action plus interest and delay damages;
- (f) failing to continue to fully, fairly and promptly evaluate the coverage issues arising out of the October 8, 2012 collision;
- (g) failing to effect a prompt and fair settlement of the claims in the underlying tort action;
- (h) failing to properly and fairly resolve the claims asserted in the underlying tort action;

- (i) failing to comply with the terms and provisions of the policy of insurance;
- (j) ignoring § 1574 of the Pennsylvania Motor Vehicle Code, 75 Pa.C.S.A. § 1574;
- (k) breaching the implied covenant of good faith and fair dealing in the policy of insurance;
- (l) violating the Unfair Insurance Practice Act, 40 P.S. § 1171.1 et seq.;
- (m) acting in dilatory and obdurate manner in handling and evaluating the claims arising out of the October 8, 2012 motor vehicle accident;
- (n) wantonly and willfully disregarding the rights of Shameka Renee Lamar;
- (o) elevating its own interests above those of Shameka Renee Lamar;
- (p) recklessly disregarding the rights of Shameka Renee Lamar by misinterpreting and misconstruing the policy so as to deny and disclaim coverage;
- (q) violating the Unfair Claims Settlement Practices, 31 Pa. Code § 146.1 et seq.;
- (r) violating the statutes and regulations governing the actions and practices of insurers in Pennsylvania;
- (s) violating its own internal policies, procedures, practices and guidelines for the handling and evaluation of coverage issues; and,
- (t) such other acts or omissions as may be developed during discovery.

33. As a result of the breach of the expressed and implied terms, provisions, promises and covenants of the policy by the defendant, Omni, Shameka Renee Lamar was not provided a defense or indemnity in the underlying tort action.

34. As a result of the failure of the defendant, Omni, to defend and indemnify Shameka Renee Lamar in the underlying tort action, Judgment was entered against Shameka Renee Lamar by the plaintiff, Richard Duncan.

35. The plaintiff, Richard Duncan, is entitled to full and complete satisfaction of the Judgment entered in the underlying tort action, plus interest and delay damages from the defendant, Omni.

WHEREFORE, the plaintiff, Richard Duncan, demands judgment against the defendant, Omni Insurance Company, in an amount in excess of \$50,000.00.

**COUNT II**  
**(Bad Faith – Common Law and Statutory)**

36. The plaintiff, Richard Duncan, hereby incorporates by reference the foregoing Paragraphs 1 through 35 of this Complaint as though same were fully set forth herein.

37. The policy of insurance issued by Omni to Shameka Renee Lamar required that the defendant, Omni, provide defense and indemnity to Shameka Renee Lamar in the underlying tort action.

38. The defendant, Omni, failed to comply with the terms and provisions of the policy in denying and disclaiming coverage for the loss.

39. The defendant, Omni, failed to comply with the specific provisions of the Pennsylvania Motor Vehicle Code in denying and disclaiming coverage for the loss.

40. The defendant, Omni, acted in bad faith in failing to defend and indemnify Shameka Renee Lamar in the underlying tort action and further failing to satisfy the Judgment entered in that matter.

41. The policy of insurance issued by the defendant, Omni, includes an implied covenant of good faith and fair dealing.

42. The defendant, Omni, failed to comply with the implied covenant of good faith and fair dealing.

43. The defendant, Omni, is liable to the plaintiff, Richard Duncan, for all common law bad faith damages.

44. The defendant, Omni, is liable to the plaintiff, Richard Duncan, for all statutory bad faith damages.

45. The Pennsylvania Bad Faith Statute, 42 Pa.C.S.A. § 8371, provides:

In an action arising under an insurer policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorneys fees against the insurer.

42 Pa.C.S.A. § 8371.

46. The claims of Shameka Renee Lamar against the defendant, Omni, for its bad faith conduct have been assigned to the plaintiff, Richard Duncan, and are an action under an insurance policy.

47. The defendant, Omni, acted in bad faith in violation of all common law duties and in violation of 42 Pa.C.S.A. § 8371 by failing to defend and indemnify Shameka Renee Lamar in the underlying tort action and further failing to satisfy the Judgment entered in that tort action.

48. The bad faith of the defendant, Omni, consisted of, but was not limited to:

- (a) engaging in unfair or deceptive acts or practices;
- (b) failing to fully, fairly and promptly evaluate the coverage issues;
- (c) failing to provide a defense to Shameka Renee Lamar in the underlying tort action;

- (d) failing to indemnify Shameka Renee Lamar in the underlying tort action;
- (e) failing to make payment of the \$28,000.00 Judgment entered in the underlying tort action plus interest and delay damages;
- (f) failing to continue to fully, fairly and promptly evaluate the coverage issues arising out of the October 8, 2012 collision;
- (g) failing to effect a prompt and fair settlement of the claims in the underlying tort action;
- (h) failing to properly and fairly resolve the claims asserted in the underlying tort action;
- (i) failing to comply with the terms and provisions of the policy of insurance;
- (j) ignoring § 1574 of the Pennsylvania Motor Vehicle Code, 75 Pa.C.S.A. § 1574;
- (k) breaching the implied covenant of good faith and fair dealing in the policy of insurance;
- (l) violating the Unfair Insurance Practice Act, 40 P.S. § 1171.1 et seq.;
- (m) acting in dilatory and obdurate manner in handling and evaluating the claims arising out of the October 8, 2012 motor vehicle accident;
- (n) wantonly and willfully disregarding the rights of Shameka Renee Lamar;
- (o) elevating its own interests above those of Shameka Renee Lamar;
- (p) recklessly disregarding the rights of Shameka Renee Lamar by misinterpreting and misconstruing the policy so as to deny and disclaim coverage;
- (q) violating the Unfair Claims Settlement Practices, 31 Pa. Code § 146.1 et seq.;
- (r) violating the statutes and regulations governing the actions and practices of insurers in Pennsylvania;
- (s) violating its own internal policies, procedures, practices and guidelines for the handling and evaluation of coverage issues; and,
- (t) such other acts or omissions as may be developed during discovery.

49. The defendant, Omni, is liable for payment of all actual and consequential damages to the plaintiff, Richard Duncan, by reason of the wanton, willful and reckless bad faith conduct in refusing to defend and indemnify Shameka Renee Lamar and failing further to satisfy the Judgment entered in the underlying tort action.

50. The defendant, Omni, wantonly, willfully and recklessly ignored the rights of Shameka Renee Lamar under the policy of insurance and under Pennsylvania law.

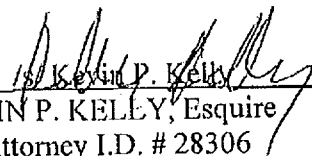
51. The defendant, Omni, recklessly disregarded the rights of Shameka Renee Lamar with knowledge of its wanton, willful and reckless actions.

52. The defendant, Omni, is liable to Richard Duncan for all direct and consequential damages as a result of the bad faith actions of the defendant, Omni, including, but not limited to:

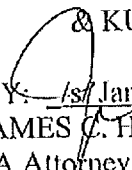
- (a) counsel fees, interest and costs incurred in the underlying tort action;
- (b) counsel fees, interest and costs incurred in the instant bad faith litigation;
- (c) punitive damages;
- (d) such other relief as the Court deems appropriate.

WHEREFORE, the plaintiff, Richard Duncan, demands judgment against the defendant, Omni Insurance Company, in an amount in excess of \$50,000.00.

KELLY & HERRON, P.C.

BY:   
KEVIN P. KELLY, Esquire  
PA Attorney I.D. # 28306  
1500 Market Street  
Centre Square – West Tower  
Suite W-3110  
Philadelphia, PA 19102  
(215) 972-1500  
FAX – 215-972-8217

HAGGERTY, GOLDBERG, SCHLEIFER  
& KUPERSMITH, P.C.

BY:   
JAMES C. HAGGERTY, Esquire  
PA Attorney I.D. # 30003  
1835 Market Street, Suite 2700  
Philadelphia, PA 19103  
(267) 350-6600  
FAX (215) 665-8197

Attorneys for Plaintiff

VERIFICATION

RICHARD DUNCAN hereby states that he is Plaintiff and verifies that the statements made in the foregoing Civil-Action Complaint are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, reading "Richard Duncan", followed by a horizontal line.

Dated: March 4, 2016



## EXHIBIT A

LAW OFFICES  
**KELLY & HERRON, P.C.**

KEVIN P. KELLY  
kkelly@kellyherronlaw.com

PAUL L. HERRON  
pherron@kellyherronlaw.com

1500 MARKET STREET  
CENTRE SQUARE - WEST TOWER  
SUITE W-3110  
PHILADELPHIA, PENNSYLVANIA 19102-2100  
(215) 972-1500  
FAX (215) 972-8217

SUBURBAN OFFICE  
845 KING OF PRUSSIA ROAD  
RADNOR, PA 19087

July 1, 2014

Jill Schrader  
Omni Insurance Company  
PO Box 105019  
Atlanta, GA 30348-5019

RE: Our Client: Richard A. Duncan, Jr.  
Your Insured: Shameka Lamar  
Your Claim No.: 2012 84855  
Date of Accident: 10/8/2012

Dear Ms. Schrader:

As you are aware, this office represents Richard Duncan, Jr., in a claim for injuries and other damages he sustained in the motor vehicle accident of October 8, 2012. My client was a passenger aboard the SEPTA Route "47" bus involved in the collision with the vehicle owned by your insured and operated by Chris Aaron at or near the intersection of 8<sup>th</sup> and Dickinson Streets in Philadelphia, PA.

Our investigation reveals liability clearly rests on your insured; the SEPTA bus was at a complete stop when your insured's driver struck the bus in the rear. His careless and negligent acts and/or omissions resulted in the aforesaid collision and caused my client to sustain serious and disabling injuries.

Mr. Duncan sustained injuries including, but not limited to, cervical sprain and strain; lumbar sprain and strain; thoracic sprain and strain; and post-traumatic cephalgia.

In an effort to cure the aforesaid injuries, my clients sought medical treatment from the following providers and incurred medical expenses as itemized:

1. JEFFERSON UNIVERSITY HOSPITAL	
10/08/12	\$ will supply
11/26/12	\$ 1,852.00

**KELLY & HERRON, P.C.**

Omni  
Page Two  
July 1, 2014

2.	ART OF PAIN MANAGEMENT 10/10/12 - 2/27/13	\$16,345.00
3.	DELAWARE CO. OPEN MRI 12/04/12	\$ 1,100.00
4.	CITY OF PHILA EMS 10/08/12	\$ 970.00

---

TOTAL MEDICAL SPECIALS:	\$ 20,267.00
-------------------------	--------------

Mr. Duncan continues to suffer pain and restriction of movement in his back. He has incurred medical expenses as itemized above. He has incurred out of pocket expenses including excess medical bills in the amount of \$20,267.00; as he was a passenger on a stationary SEPTA bus, he is not entitled to PIP benefits, and he does not personally own a vehicle, nor does he reside with a relative who owns a vehicle; I enclose a copy of his properly executed Affidavit of No Insurance. Accordingly, all of his medical bills remain unpaid. He has been deprived of life's pleasures. He has in the past and will continue in the future to suffer pain and inconvenience as a result of the negligence of your insured's driver.

In view of the manner in which this accident happened, the medical expenses/economic damages suffered by my client, and the continuing residual affects he is experiencing, my demand for settlement purposes is Fifty Two Thousand Five Hundred (\$52,500.00) Dollars.

Kindly contact the undersigned upon completion of your settlement evaluation with a view toward an amicable resolution of this claim.

**KELLY & HERRON, P.C.**

Omni  
Page Three  
July 1, 2014

Thank you for your attention to this matter.

Very truly yours,

KEVIN P. KELLY, Esquire

KPK/lml  
enclosures

## EXHIBIT B



OMNI INSURANCE COMPANY  
P.O. BOX 3000  
PLYMOUTH MEETING, PA 19462  
PHONE: 800-954-2442 / FAX: 610-832-2138

KEVIN P. KELLY  
KELLY & HERRON  
1700 MARKET ST., STE. 3112  
PHILADELPHIA, PA 19103

July 08, 2014

Re:  
Insured: Shameka Lamar  
Driver: Chris Porter, aka Chris Aaron  
Our Claim Number: 2012-84855  
Loss Date: 10/08/2012  
Your Client: Richard Duncan, Jr.

Dear Mr. Kelly:

Omni Insurance Company has completed its investigation into the above captioned loss. We have determined there is no coverage, as the insured vehicle was being operated by an unlicensed driver.

The policy reads in Part A-Liability Coverage, that an "Insured as used in this Part means: 3. A person using your covered auto with the owner's express or implied permission and within the scope of the permission granted. The person must hold a valid driver's license at the time of loss and must not be a regular operator of your covered auto." Additionally, Exclusion 16 reads in pertinent part: "We do not provide Liability Coverage for any insured: 16. For bodily injury or property damage resulting from the ownership, maintenance or use of any vehicle when driven by an individual who: c. Does not have a valid driver's license; or d. Has a suspended or revoked driver's license." Our investigation has revealed that the vehicle operator did not have a valid license.

Due to the insured vehicle being operated by an unlicensed driver, Omni Insurance Company will be unable to provide liability coverage, or make any payments relative to damages that may have resulted in the accident.

If you wish to discuss this matter, I can be reached Monday-Friday, 8:00 am -4:00 pm, at 800-954-2442, ext. 8765.

Sincerely,

Andrew Funk  
Bodily Injury Supervisor

## EXHIBIT C

KELLY & HERRON, P.C.,  
 BY: KEVIN P. KELLY, ESQUIRE  
 ATTORNEY I.D. NO: 28306  
 1500 Market Street, Suite W3110  
 Philadelphia, PA 19102  
 (215) 972-1500

Attorney for Plaintiffs

RICHARD DUNCAN

: PHILADELPHIA COUNTY  
 : COURT OF COMMON PLEAS

VS.

: SEPTEMBER TERM, 2014

CHRIS AARON

: NO. 0479

and

SHAMEKA RENEE LAMAR

COMPLAINT IN CIVIL ACTION  
2V - MOTOR VEHICLE ACCIDENT

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificación. Hace falta aparecer una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

PHILADELPHIA BAR ASSOCIATION  
 Lawyer Referral and Information Service  
 One Reading Center  
 Philadelphia, PA 19107  
 (215) 238-1701

7.22.15 @ 6:26 pm

7.23.15 @ 5:45 pm

7.24.15 @ 10:20 am

7.24.15 @ 3:25 pm

7.28.15 @ 7:55 pm

7.29.15 @ 6:40 pm

267 973 7146



COMPLAINT IN CIVIL ACTION

1. Plaintiff, Richard Duncan, is an adult individual residing at 319 Whites Road, Apartment D4, Lansdale, PA, 19446.

2. Defendant, Chris Aaron, is an adult individual residing at 428 Mifflin Street, Philadelphia, PA, 19148.

3. Defendant, Shameka Renee Lamar, is an adult individual residing at 2545 W. Silver Street, Philadelphia, PA, 19132.

4. On or about October 8, 2012, and at all times relevant herein, defendant, Chris Aaron, with permissive use, possessed, controlled and operated a vehicle believed to be a 2003 Chevrolet Avalanche, PA registration ZCV-5288, which vehicle was owned by defendant, Shameka Renee Lamar, and involved in the accident hereinafter described.

5. On or about October 8, 2012, and at all times relevant herein, plaintiff was a passenger aboard the SEPTA Route "47" bus which was at a complete stop at a posted stop sign southbound on 8<sup>th</sup> Street at its intersection with Dickenson Street in the City of Philadelphia, PA when it was suddenly and unexpectedly struck in the rear by the vehicle owned by defendant, Shameka Renee Lamar, and operated by defendant, Chris Aaron, which was then and there traveling in a southbound direction on 8th Street in a careless and negligent manner.

COUNT ONE  
RICHARD DUNCAN v. CHRIS AARON  
NEGLIGENCE

6. Plaintiff incorporates by reference paragraphs one through five of this Complaint as though same were fully set forth at length.

7. The automobile collision described in the preceding paragraphs of this Complaint was caused by the carelessness and negligence of the Defendant, Chris Aaron, both generally and in the following particular respects:

- (a) Failing to observe the stopped SEPTA bus;
- (b) Failing to maintain a proper lookout;
- (c) Failing to maintain adequate control of the operation of said motor vehicle;
- (d) Operating said motor vehicle at a speed which was excessive under the circumstances;
- (e) Failing to stop said motor vehicle within the assured clear distance ahead;
- (f) Operating said motor vehicle without due regard for the point and position of the opposing motor vehicle; and
- (g) Failing to operate said motor vehicle with due care and regard for the health and safety of Plaintiff.

8. As a result of the Defendant's negligence and the accident caused thereby, Plaintiff sustained severe bodily injuries including, but not limited to, cervical sprain and strain; lumbar sprain and strain; thoracic sprain and strain; and post-traumatic cephalgia; multiple bruises, lacerations and abrasions, together

with a severe shock to his nervous system, some or all of which may be permanent in nature and, as a result, the Plaintiff has suffered and continues to suffer pain and inconvenience as a result of these injuries.

9. As a further result of the foregoing, the Plaintiff has been obliged to receive and under medical attention and care and to incur various expenses for same and he may be obliged to continue to undergo such medical care and to incur such expenses for an indefinite time in the future.

10. As a further result of the foregoing, the Plaintiff has suffered, and will continue to suffer, a severe loss of his earnings and/or impairment of earning capacity or power, which loss and/or impairment has or may exceed the sum recoverable under the limitations in the Pennsylvania Financial Responsibility Law.

11. As a further result of the foregoing, the Plaintiff has suffered in the past, and will continue to suffer in the future, excruciating and agonizing pains, aches, mental anguish, humiliation, disfigurement and limitation and restriction of his usual duties, pursuits and pleasures.

WHEREFORE, Plaintiff demands judgment against the Defendants, individually, jointly and severally, in an amount not in excess of Fifty Thousand (\$50,000.00) Dollars.

COUNT TWO  
RICHARD DUNCAN v. SHAMEKA RENEE LAMAR  
NEGLIGENT ENTRUSTMENT

12. Plaintiff incorporates by reference paragraphs one through eleven of this Complaint as though same were fully set

forth at length.

13. The aforesaid collision, which caused plaintiff's injuries and losses was a direct and proximate result of the negligent and careless conduct of the defendant owner, Shameka Renee Lamar, which consisted of the following:

- a) failing to exercise due care for the rights, safety and position of the plaintiff at the location aforesaid;
- b) failing to maintain the vehicle in proper working order;
- c) negligently and carelessly granting permission to the defendant driver for the use of the vehicle owned by the defendant owner, when the latter defendant knew or should have known that the former defendant was unlicensed and/or incapable or unwilling to properly and safely operate said vehicle.

14. The defendant owner, Shameka Renee Lamar, is liable to the plaintiff for the damages suffered as more fully set forth hereinbefore by virtue of the failure to investigate the qualifications and capabilities of the defendant driver to operate the motor vehicle which the defendant driver was operating at the time of the incident.

15. The defendant owner, Shameka Renee Lamar, is further liable to the plaintiff in that she provided permissive use of her vehicle to the defendant, Chris Aaron, when she knew, or should have known, that defendant Aaron did not possess a valid operator's license on the date of the accident herein.

16. Defendant, Shameka Renee Lamar, knew, or should have known, that her automobile insurance policy contained an exclusion stating the policy did not afford liability coverage in the event

the driver of her vehicle did not possess a valid operators license when involved in an motor vehicle accident.

17. As a result of the Defendant's negligence and the accident caused thereby, Plaintiff sustained severe bodily injuries including, but not limited to, cervical sprain and strain; lumbar sprain and strain; thoracic sprain and strain; and post-traumatic cephalgia; multiple bruises, lacerations and abrasions, together with a severe shock to his nervous system, some or all of which may be permanent in nature and, as a result, the Plaintiff has suffered and continues to suffer pain and inconvenience as a result of these injuries.

18. As a further result of the foregoing, the Plaintiff has been obliged to receive and under medical attention and care and to incur various expenses for same and he may be obliged to continue to undergo such medical care and to incur such expenses for an indefinite time in the future.

19. As a further result of the foregoing, the Plaintiff has suffered, and will continue to suffer, a severe loss of his earnings and/or impairment of earning capacity or power, which loss and/or impairment has or may exceed the sum recoverable under the limitations in the Pennsylvania Financial Responsibility Law.

20. As a further result of the foregoing, the Plaintiff has suffered in the past, and will continue to suffer in the future, excruciating and agonizing pains, aches, mental anguish, humiliation, disfigurement and limitation and restriction of his usual duties, pursuits and pleasures.

WHEREFORE, Plaintiff demands judgment against the Defendants, individually, jointly and severally, in an amount not in excess of Fifty Thousand (\$50,000.00) Dollars.

KELLY & HERRON, P.C.

By: /s/  
KEVIN P. KELLY, ESQUIRE  
Attorney for Plaintiff

## EXHIBIT D

First Judicial District of Pennsylvania  
Philadelphia Court of Common Pleas

Richard Duncan, Plaintiff  
118 Girard Ave., Apt. C  
Glenside, PA 19038

September Term, 2014, 00479  
(Month) (Year) (No.)

Arbitration

(Please indicate type of action)

☒ Motor Vehicle

(Date of Accident) 11-8-12

Defendants,

Versus

Chris Aaron | Shameka Renee Lamar  
428 M. Plin St. 2545 W. Silver St.  
Philadelphia, PA Philadelphia, PA  
19148 | 19132

☐ Delay Damages (Prime Rate +1)

Duncan Vs. Aaron Etal-AWFFP



☐ Other

Report and Award of Arbitrators

And Now, this 3 day of June, Year 2015, we the undersigned arbitrators having been duly appointed and sworn, make the following award:

Judgment for Plaintiff and against  
Defendants Chris Aaron and Shameka Renee Lamar  
in the amount of \$28,000.00 (\$13,000.00 for medicals  
and \$15,000.00 for pain and suffering).

Please name the parties if there are more than one plaintiff and/or defendant. Please address all counterclaims and cross-claims. Please complete percentage of negligence on reverse side if applicable.

[Signature]  
Chairperson

[Signature]  
Arbitrator

[Signature]  
Arbitrator

Alston B. Meadows, 1325 Spruce St., Phila, PA 19104  
Please Print Name, Address and I.D. No.

Ruth Pearson - 3001 S. Sydenham St. Phila, PA 19145  
Please Print Name, Address and I.D. No.

Michael S. Miller Jr. PPA 19102 #310431  
Please Print Name, Address and I.D. No.

List Attorneys of Record and Unrepresented Parties Who:

Appeared at the hearing:

Kevin P. Kelly for Plaintiff

Did Not Appear at the Hearing:

Def. Chris Aaron

Def. Shameka Renee Lamar



## Questions to be Answered by the Arbitrators in Negligence Cases

### Instructions:

Taking the combined negligence that was a substantial factor in bringing about any or all of the plaintiff's injuries, damage or losses as 100%, answer the following questions and state in percentages the causal negligence attributed to each party you have found causally negligent.

Do you find that any defendant or additional defendant was negligent?  
If so, state the name of the party and percentage of negligence attributable to that party.

	%
	%
	%
	%

Do you find that any plaintiff was negligent?  
If so, state the name of the party and percentage of negligence attributable to that party.

	%
	%
	%
	%

Total 100 %

### Notice of Entry of Award

And Now, this \_\_\_\_\_ day of \_\_\_\_\_, Year \_\_\_\_\_, at \_\_\_\_\_, the above award was entered upon the docket and notice thereof given by mail to the parties or their attorneys.

DOCKETED  
ARBITRATION

JUN - 3 2015

(Arbitration compensation to be paid on appeal \$225.00) S. PRESSLEY  
Prothonotary

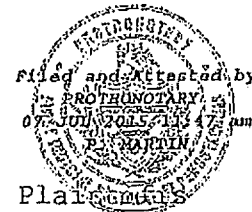
By: \_\_\_\_\_

Separate Appeals must be filed with the Prothonotary pursuant to P.A. R. Civ. P. No. 1308, and the requisite fees paid, if two or more cases are consolidated for Trial and/or Discovery purposes. Only those cases which are appealed will be scheduled for a *de novo* hearing. Awards in cases not appealed will become final upon expiration of the appeal time.

Case ID: 14090047  
Case ID: 160300267

## EXHIBIT E

KELLY & HERRON, P.C.  
BY: KEVIN P. KELLY, ESQUIRE  
ATTORNEY I.D. No: 28306  
1500 Market Street, Suite W3110  
Philadelphia, PA 19102  
(215) 972-1500



Attorney for Plaintiff

RICHARD DUNCAN

: PHILADELPHIA COUNTY  
: COURT OF COMMON PLEAS

vs.

: SEPTEMBER TERM, 2014

CHRIS AARON

:  
: NO. 0479

and

SHAMEKA RENEE LAMAR

PRAECIPE TO ENTER JUDGMENT

TO THE PROTHONOTARY:

Kindly enter judgment in favor of the plaintiff, Richard Duncan, and against defendants, Chris Aaron and Shameka Renee Lamar, in the amount of \$28,000.00 pursuant to the Arbitration Award dated June 3, 2015 upon payment of your costs only.

Attached hereto, made a part hereof, and marked Exhibit "A" is a copy of the Award of the Board of Arbitrators dated June, 2015.

KELLY & HERRON, P.C.

BY:           /s/            
KEVIN P. KELLY, Esquire  
Attorneys for Plaintiff

dated: July 7, 2015

# EXHIBIT "A"

**First Judicial District of Pennsylvania  
Philadelphia Court of Common Pleas**

Richard Duncan, Plaintiff  
118 Girard Ave., Apt. C  
Glenaside, PA 19038

September Term, 2014, 00479  
(Month) (Year) (No.)

**Arbitration**

(Please indicate type of action)

☒ Motor Vehicle

(Date of Accident) 11-8-12

Defendants,

Versus

Chris Aaron | Shameka Renee Lamar  
428 M. Plin St. | 2545 W. Silver St.  
Philadelphia, PA | Philadelphia, PA  
19148 | 19132

☐ Delay Damages (Prime Rate +1)

Duncan Vs. Aaron Etal-AWFFP



☐ Other

**Report and Award of Arbitrators**

And Now, this 3 day of June, Year 2015, we the undersigned arbitrators having been duly appointed and sworn, make the following award:

Judgment for Plaintiff and against  
Defendants Chris Aaron and Shameka Renee Lamar  
in the amount of \$28,000.00 (\$13,000.00 for medicals  
and \$15,000.00 for pain and suffering).

Please name the parties if there are more than one plaintiff and/or defendant. Please address all counterclaims and cross-claims. Please complete percentage of negligence on reverse side if applicable.

[Signature]  
Chairperson

[Signature]  
Arbitrator

[Signature]  
Arbitrator

Alton B. Monday Jr., 1525 S. 1st St., Phila, PA 19102  
Please Print Name, Address and I.D. No. 156963

Ruth Pearson - 3001 S. 1st St., Phila, PA 19145  
Please Print Name, Address and I.D. No. 30 S. 1st St. 6th FL

Michael S. Miller Jr. DPA 19102 FF 310431  
Please Print Name, Address and I.D. No.

List Attorneys of Record and Unrepresented Parties Who:

Appeared at the hearing:

Kevin P. Kelly for Plaintiff

Did Not Appear at the Hearing:

Def. Chris Aaron

Def. Shameka Renee Lamar

## Questions to be Answered by the Arbitrators in Negligence Cases

### Instructions:

Taking the combined negligence that was a substantial factor in bringing about any or all of the plaintiff's injuries, damage or losses as 100%, answer the following questions and state in percentages the causal negligence attributed to each party you have found causally negligent.

Do you find that any defendant or additional defendant was negligent?  
If so, state the name of the party and percentage of negligence attributable to that party.

	%
	%
	%
	%

Do you find that any plaintiff was negligent?  
If so, state the name of the party and percentage of negligence attributable to that party.

	%
	%
	%
	%
Total	100%

## Notice of Entry of Award

And Now, this \_\_\_\_\_ day of \_\_\_\_\_, Year \_\_\_\_\_, at \_\_\_\_\_, the above award was entered upon the docket and notice thereof given by mail to the parties or their attorneys.

DOCKETED  
ARBITRATION

JUN - 3 2015

(Arbitration compensation to be paid on appeal \$225.00)

S. PRESSLEY

Prothonotary

By: \_\_\_\_\_

Separate Appeals must be filed with the Prothonotary pursuant to P.A. R. Civ. P. No. 1308, and the requisite fees paid, if two or more cases are consolidated for Trial and/or Discovery purposes. Only those cases which are appealed will be scheduled for a *de novo* hearing. Awards in cases not appealed will become final upon expiration of the appeal time.

Case ID: 14090047  
160300267

**First Judicial District of Pennsylvania  
Philadelphia Court of Common Pleas**

Richard Duncan, Plaintiff  
118 Girard Ave., Apt. C  
Glenside, PA 19038

September Term, 2014, 00479  
(Month) (Year) (No.)

**Arbitration**

(Please indicate type of action)

☒ Motor Vehicle

(Date of Accident) 11-8-12

☐ Delay Damages (Prime Rate +1)

Duncan Vs Aaron Etal-AWFFP



☐ Other

Defendants,

Versus

<u>Chris Aaron</u>	<u>Shamika Renee Lamar</u>
<u>428 Millin St.</u>	<u>2545 W. Silver St.</u>
<u>Philadelphia, PA</u>	<u>Philadelphia, PA</u>
<u>19148</u>	<u>19132</u>

**Report and Award of Arbitrators**

And Now, this 3 day of June, Year 2015, we the undersigned arbitrators having been duly appointed and sworn, make the following award:

Judgment for Plaintiff and against  
Defendants Chris Aaron and Shamika Renee Lamar  
in the amount of \$28,000.00 (\$13,000.00 for medicals  
and \$15,000.00 for pain and suffering).

Please name the parties if there are more than one plaintiff and/or defendant. Please address all counterclaims and cross-claims. Please complete percentage of negligence on reverse side if applicable.

[Signature]  
Chairperson

[Signature]  
Arbitrator

[Signature]  
Arbitrator

Alton B. Mendez Jr., 1525 Spruance St., Philadelphia, PA 19102  
Please Print Name, Address and I.D. No. #56963

Ruth Pearson - 3001 S. 84th Ave. St. PA 19145  
Please Print Name, Address and I.D. No. #310431

**List Attorneys of Record and Unrepresented Parties Who:**

Appeared at the hearing:

Kevin P. Kelly for Plaintiff

Did Not Appear at the Hearing:

Def. Chris Aaron

Def. Shamika Renee Lamar

## EXHIBIT F



RICHARD DUNCAN	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
VS.	:	
	:	SEPTEMBER TERM, 2014
CHRIS AARON	:	
AND	:	NO.: 0479
SHAMEKA RENEE LAMAR	:	

ASSIGNMENT

WHEREAS, the Plaintiff, Richard Duncan, sustained personal injuries in an October 8, 2012 motor vehicle accident,

WHEREAS, the motor vehicle occupied by Plaintiff, Richard Duncan was rear-ended by a vehicle operated by Defendant, Chris Aaron and owned by Defendant, Shameka Renee Lamar,

WHEREAS, the motor vehicle Chris Aaron was operating at the time of the accident was insured by Omni Insurance Company,

WHEREAS, Defendant, Shameka Renee Lamar was the named insured under a personal automobile policy issued by Omni Insurance Company,

WHEREAS, Plaintiff, Richard Duncan instituted suit against Defendants, Chris Aaron and Shameka Renee Lamar in connection with the injuries sustained in the October 8, 2012 motor vehicle accident,

WHEREAS, the tender of defense and indemnity of the lawsuit was made to Omni Insurance Company,

WHEREAS, Omni Insurance Company disclaimed coverage to Defendants, Chris Aaron and Shameka Renee Lamar for any claims arising out of the October 8, 2012 motor vehicle accident,

WHEREAS, Omni Insurance Company refused to provide a defense or indemnity to Defendants, Chris Aaron and Shameka Renee Lamar in the present action instituted by Plaintiff, Richard Duncan,

WHEREAS, on or about March 23, 2015 a default judgment was entered against Defendants, Chris Aaron and Shameka Renee Lamar,

WHEREAS, on June 3, 2015 an Arbitration Hearing for an Assessment of Damages was held awarding damages against Defendants, Chris Aaron and Shameka Renee Lamar in the amount of Twenty Eight Thousand (\$28,000.00) Dollars,

WHEREAS, on or about July 7, 2015, judgment was entered against Defendants, Chris Aaron and Shameka Renee Lamar in the amount of \$28,000.00,

WHEREAS, Defendant, Shameka Renee Lamar desires to assign her rights against Omni Insurance Company to Plaintiff, Richard Duncan in connection with the judgment entered against her in this action for good and valuable consideration as set forth more fully below, and,

WHEREAS, Plaintiff, Richard Duncan agrees to satisfy any judgment entered against Defendants, Shameka Renee Lamar and Chris Aaron after the conclusion of all claims against Omni Insurance Company.

NOW THEREFORE, it is hereby stipulated and agreed by and between the Plaintiff, Richard Duncan and Defendant, Shameka Renee Lamar as follows:

1. Assignment. The Defendant, Shameka Renee Lamar

for good and valuable consideration, as set forth more fully below, hereby assigns to the Plaintiff, Richard Duncan any and all rights, interest, claims and/or potential causes of action including, but not limited to, all contractual and extra-contractual claims, actions for common law and statutory bad faith under 42 Pa.C.S.A. §8371, a breach of fiduciary duty, breach of duty of good faith and fair dealings, punitive damages, unfair trade practice and consumer protection law, 73 P.S. §201-1 et seq., negligence, breach of contract, misrepresentation, and any other claims or causes of action of any nature whatsoever, in law or in equity, which she now has and/or may have against Omni Insurance Company, its parent company(ies) affiliates, associates, subsidiaries, agents, adjusters, employees and attorneys with respect to the disclaimer of coverage to me in the above captioned matter and any award, verdict or judgment entered against me in this lawsuit which has resulted or may hereafter result in personal liability by me to satisfy the award, verdict or judgment on the claims of the Plaintiff, Richard Duncan which could have been resolved by Omni Insurance Company if timely and appropriately responded to the demands of the Plaintiff, Richard Duncan, to resolve the matter within the available limits of liability coverage in connection with the claims for damages arising from the injuries sustained in the October 8, 2012 motor vehicle accident.

2. Consideration. In consideration of this assignment,

the Plaintiff, Richard Duncan agrees and covenants not to initiate any collection or execution proceedings against the Defendants, Shameka Renee Lamar and Chris Aaron, as a consequence of the award and judgment entered against the Defendants.

3. Satisfaction of Judgment. In further consideration of this assignment, the Plaintiff, Richard Duncan, agrees to mark satisfied any judgment entered against the Defendants, Shameka Renee Lamar and Chris Aaron; after the conclusion of all proceedings against Omni Insurance Company, regardless of the ultimate outcome. Any judgment shall remain in full force and effect until all proceedings against Omni Insurance Company have been resolved by final judgment or settlement.

4. Full Agreement. The terms and conditions contained in this Assignment supersede all prior oral and written understandings between the Plaintiff, Richard Duncan and the Defendant, Shameka Renee Lamar and constitutes the entire agreement among the parties relating to the payment pursuant to the agreements set forth in this Assignment as noted more fully herein. This Assignment shall not be modified or amended except by a writing signed by all parties. Further, this Assignment



# EXHIBIT "B"

RICHARD DUNCAN  
1300 Pennsylvania Avenue  
Apartment H-3  
Oreland, PA 19075

v.

OMNI INSURANCE COMPANY  
2018 Powers Ferry Road, Suite 400  
Atlanta, GA 30339

: IN THE COURT OF COMMON PLEAS  
: PHILADELPHIA COUNTY, PENNSYLVANIA  
:  
:  
:  
:  
:

: MARCH TERM, 2016

: NO. 267  
:  
:

Filed and Attested by the  
Office of Judicial Records  
15 MAR 2016 02:55 pm  
C. MALVESTUTO

**AFFIDAVIT OF SERVICE**

James C. Haggerty, Esquire, being duly sworn according to law, deposes and states that a copy of the Complaint was served upon the defendant, Omni Insurance Company, 2018 Powers Ferry Road, Suite 400, Atlanta, Georgia 30339 by Certified Mail, Return Receipt Requested in accordance with the Pennsylvania Rules of Civil Procedure. A copy of the signed Receipt Card is attached.

HAGGERTY, GOLDBERG, SCHLEIFER  
& KUPERSMITH, P.C.

BY: /s/ James C. Haggerty  
JAMES C. HAGGERTY, Esquire  
PA Attorney I.D. # 30003  
1835 Market Street, Suite 2700  
Philadelphia, PA 19103  
(267) 350-6600  
FAX (215) 665-8197

Attorneys for Plaintiff

**SENDER: COMPLETE THIS SECTION**

Complete Items 1, 2, and 3.

Print your name and address on the reverse so that we can return the card to you.

Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

OMNI INSURANCE Company  
2018 Powers Ferry Road  
Suite 400  
Atlanta, GA 30339



9590 9403 0428 5163 1766 53

Article Number (Transfer from service label)

14 2870 0001 1107 7097

Form 3811, April 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *Kelli Pama*☐ Agent☐ Addressee

B. Received by (Printed Name)

*Kelli Pama*

C. Date of Delivery

3/4/16

D. Is delivery address different from Item 1? ☐ YesIf YES, enter delivery address below: ☒ No**3. Service Type**☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation

Restricted Delivery

Domestic Return Receipt